

ASSEMBLY BILL

No. 2767

**Introduced by Assembly Member Canciamilla
(Coauthor: Assembly Member Torrico)**

February 24, 2006

An act to amend Section 631 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2767, as introduced, Canciamilla. Waiver of jury trial.

The California Constitution provides that trial by jury is an inviolate right, but may be waived in a civil cause by the consent of the parties expressed as prescribed by statute. Existing law provides that a party waives trial by jury in a civil case in any of the ways specified, including, but not limited to, by written consent filed with the clerk or judge.

This bill would provide that a party may waive trial by jury in a civil case by, at any time, entering into a written contract, agreement, undertaking, or commitment in which the party waives the right to a trial by jury, unless the party is a consumer, as defined.

The bill would make a specified statement of the intent of the Legislature with respect to certain provisions of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 631 of the Code of Civil Procedure is
2 amended to read:

631. (a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d).

(b) Each party demanding a jury trial shall deposit advance jury fees with the clerk or judge. The total amount of the advance jury fees may not exceed one hundred fifty dollars (\$150) for each party. The deposit shall be made at least 25 calendar days before the date initially set for trial, except that in unlawful detainer actions the fees shall be deposited at least five days before the date set for trial.

(c) The parties demanding a jury trial shall deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, a sum equal to that day's fees and mileage of the jury, including the fees and mileage for the trial jury panel if the trial jury has not yet been selected and sworn. If more than one party has demanded a jury, the respective amount to be paid daily by each party demanding a jury shall be determined by stipulation of the parties or by order of the court.

(d) A party waives trial by jury in any of the following ways:

- (1) By failing to appear at the trial.
- (2) By written consent filed with the clerk or judge.
- (3) By oral consent, in open court, entered in the minutes.
- (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or stipulation, or within five days after notice of setting if it is set without notice or stipulation.

(5) By failing to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b).

(6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day's session, the sum provided in subdivision (c).

(7) *By, at any time, entering into a written contract, agreement, undertaking, or commitment in which the party waives the right to a trial by jury, other than a contract, agreement, undertaking, or commitment in which the party is a consumer. As used in this paragraph, "consumer" means an individual who is entering into the contract, agreement, undertaking, or commitment primarily for personal, family, or household purposes.*

1 (e) The court may, in its discretion upon just terms, allow a
2 trial by jury although there may have been a waiver of a trial by
3 jury.

4 (f) *Paragraph (7) of subdivision (d) applies to any contract,*
5 *agreement, undertaking, or commitment entered into before, on,*
6 *or after, the effective date of the act adding that paragraph. Any*
7 *waiver of the right to a trial by jury in a contract, agreement,*
8 *undertaking, or commitment entered into before the effective date*
9 *of the statute adding that paragraph shall be valid, enforceable,*
10 *and effective as if that paragraph had been in effect on the date*
11 *the contract, agreement, undertaking, or commitment was*
12 *executed. Notwithstanding this subdivision, the addition of*
13 *paragraph (7) of subdivision (d) and the retroactivity of that*
14 *paragraph as set forth in this subdivision does not affect or*
15 *otherwise interfere with any jury trial that has commenced as of*
16 *the effective date of the act adding that paragraph, regardless*
17 *whether a party to that litigation had entered into a written*
18 *contract, agreement, undertaking, or commitment in which the*
19 *party waived the right to a trial by jury.*

20 SEC. 2. It is the intent of the Legislature in adding paragraph
21 (7) to subdivision (d) of Section 631 of the Code of Civil
22 Procedure, which would require that the contract, agreement,
23 undertaking, or commitment evidencing a waiver of the right to a
24 trial by jury be in writing to be enforceable, and would exclude
25 the waiver of this right by a consumer, to provide the specific
26 safeguards for protecting the right to a trial by jury under Section
27 16 of Article I of the California Constitution that are necessary
28 and appropriate in connection with this act.